

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-0027

IN RE: MIVO North Fort Myers

PROCEEDINGS: PUBLIC HEARING

BEFORE: Amanda Rivera
Hearing Examiner

DATE: January 19, 2023

TIME: 9:00 a.m. to 9:49 a.m.

LOCATION: Lee County Hearing Examiner
Hearing Room, Second Floor
1500 Monroe Street
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns
Florida Professional Reporter

ORIGINAL

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13 ALSO PRESENT:

14 Sina Ebrahimi, Kimley-Horn
15 Peter Van Buskirk, Kimley-Horn
16 Ted Treesh, TR Transportation
17 Jody Sisk, Atlantic Ecological Services
18 Ian Slavin, MIVO Development Group
19 Taylor Bollt, Esquire, Henderson Franklin

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P R O C E E D I N G S eye

HEARING EXAMINER RIVERA: Good morning. My name is Amanda Rivera. Excuse me. I'm the Hearing Examiner presiding over today's hearing. The date is January 19th, 2023, and this is case DCI-2022-00027. It's a rezoning request in the North Fort Myers Planning Community to RPD.

Because this is a quasi-judicial hearing, all testimony and evidence must be taken under oath. So if you intend to speak, if you could please raise your hand.

(Participants sworn en masse.)

HEARING EXAMINER RIVERA: Thank you.

Do we have any members of the public here today? It does not look like it so I will dispense with those instructions, and we can start with the Applicant.

MR. WRIGHT: Thank you.

HEARING EXAMINER RIVERA: Good morning.

MR. WRIGHT: Good morning. For the record, I'm Jeff Wright with the Henderson Franklin law firm here on behalf of the Applicant. With me today, we have Ian Slavin with the Applicant; from Kimley-Horn we have Sina Ebrahimi and Peter Van Buskirk; for our transportation consultant, Ted Treesh; also on our team is John Babbitt, our architect -- he's not present

1 today; Jody Sisk is here for environmental -- and let's
2 get the slide up here, some context -- and Surveyor
3 Scott Urquhart also on our team, and I don't believe
4 he's present today.

5 A little background, we're -- the Applicant is
6 seeking to rezone a 19-plus-acre parcel that's
7 currently in split zoning. On the northern aspect of
8 the property -- and you'll hear more detail and see
9 maps, but the northern aspect, which is about six
10 acres, is zoned C-1A; and the southern aspect of this
11 same parcel is zoned CPD; and they're seeking to rezone
12 it to one uniform zoning, RPD, to allow for a
13 multi-family community with 258 units. 95 of those
14 units will require approval through the density bonus
15 program.

16 The property, as you'll see in just a bit, is
17 located on North Cleveland Avenue, basically US 41,
18 just north of Pine Island Road, and we'll have more
19 detail on this specific location shortly.

20 As I mentioned, it's a little over 19 acres in
21 size, and the -- we've reviewed the Staff Report. We
22 agree with their recommendation of approval. They're
23 recommending seven conditions. We're in agreement with
24 all of those conditions.

25 The Applicant is now seeking one deviation --

1 started with two -- one deviation related to turning
2 movements, and Staff is in agreement with that
3 deviation. There are two related conditions which I'll
4 call Condition 6 and 7, that are directly tied to that
5 deviation.

6 As I mentioned, our project team is here. Peter
7 will come to the podium first and present the bulk of
8 the testimony on the matter, the planning framework and
9 the rezoning request. Sina will also take the podium
10 briefly to talk about the site features and deviations.

11 Both of their resumés are on file with the Hearing
12 Examiner's Office, and they both testified in similar
13 proceedings before the Hearing Examiner. And if
14 possible, if it's appropriate, at this time I'd like to
15 have them recognized as experts for today's hearing --

16 HEARING EXAMINER RIVERA: Yes, thank you.

17 MR. WRIGHT: -- in their respective fields of
18 expertise. Thank you.

19 And a couple of housekeeping matters: First of
20 all, our 48-hour letter, it wasn't -- didn't have a lot
21 of substantive disagreements or anything with Staff.
22 We just noticed a few discrepancies, and I've since
23 spoken with Ms. Workman, and she is in agreement with
24 all of those things that we pointed out. There's
25 nothing in dispute in regard to those listed items in

1 our 48-hour letter, and I'd be happy to go through each
2 of them. As I mentioned, the property acreage is
3 19.41. Because of the history and the way that the
4 parcels were added, I think, by Staff, they had a
5 variation on that number, but the number -- the correct
6 number is 19.41. So that's the 48-hour letter; all the
7 minor issues have been addressed.

8 One thing also in the 48-hour, I think it's our
9 last item on that -- on the list, is -- there's a
10 reference to residential single-family zoning that we'd
11 like to strike as a -- from the conditions, it's -- the
12 uses.

13 Okay. I just want to make sure I have everything.
14 So we have the experts -- the last thing is our
15 exhibits. We have a couple of exhibits that we would
16 like to enter into the record. The -- we have other
17 experts here today, and we have their resumés. I'd
18 like to introduce those as exhibits; but if you have a
19 preference, we may not need those; and we can use them
20 when they are needed, if and as they are needed.

21 HEARING EXAMINER RIVERA: Okay. We'll just take
22 them then if they're actually called as witnesses.

23 MR. WRIGHT: Okay.

24 HEARING EXAMINER RIVERA: I don't need to accept
25 them otherwise.

1 MR. WRIGHT: Thank you.

2 And the second exhibit is our -- make sure I got
3 these -- our PowerPoint. We're going to give our
4 presentation, obviously, via PowerPoint today; and I'm
5 just now going to give Ms. Workman a copy of that; and
6 we ask that that be entered into the record, I guess,
7 as Applicant's Exhibit Number 1.

8 (Applicant Exhibit 1 submitted.)

9 HEARING EXAMINER RIVERA: 1, yes, thank you.

10 Do you have the updated master concept plan also
11 that was referenced in the 48-hour letter to submit?

12 MR. WRIGHT: Yes, we do, and that's our second
13 exhibit.

14 HEARING EXAMINER RIVERA: Okay.

15 MR. WRIGHT: Will be Number 2.

16 HEARING EXAMINER RIVERA: Yes, thank you.

17 MR. EBRAHIMI: The master concept plan I will have
18 to email. I only have a soft copy.

19 HEARING EXAMINER RIVERA: Okay, you don't have a
20 hard copy. Has that been shared with Staff, though,
21 prior to today, the updated master concept plan that
22 was referenced in the 48-hour letter? I think it was
23 just to withdraw the deviation --

24 MR. EBRAHIMI: It was just to --

25 HEARING EXAMINER RIVERA: -- reference, is my

1 understanding.

2 MR. EBRAHIMI: I don't -- I'll send it over today.

3 HEARING EXAMINER RIVERA: Okay.

4 MS. WORKMAN: We do not have it, but it's
5 understood what's happening.

6 HEARING EXAMINER RIVERA: Thank you, okay. So
7 then I'll make a note. It will still be labeled -- so
8 the PowerPoint will be Applicant's Exhibit 1, and the
9 master concept plan I'll still reserve as Applicant's
10 Exhibit 2, if you can just provide that to the Hearing
11 Examiner's Office.

12 MR. EBRAHIMI: (Nods head.)

13 MR. WRIGHT: Thank you, appreciate that.

14 Before I turn it over to Peter, I just wanted to
15 say thanks to Staff. They've worked hard on this
16 project, and they've been very cooperative and helpful
17 and professional. We appreciate it.

18 And thank you in advance for your time and
19 attention today. We have a 32-slide PowerPoint. We've
20 already gotten through three of them so hopefully we'll
21 be efficient with our time. Thank you.

22 HEARING EXAMINER RIVERA: Thank you.

23 Good morning.

24 MR. VAN BUSKIRK: Good morning, Peter Van Buskirk
25 with Kimley-Horn. I am a licensed professional

1 engineer in the state of Florida. I'm also a certified
2 planner with the American Institute of Certified
3 Planners.

4 So Jeff gave a summary of the request. This is
5 the current zoning that exists there today. The north
6 portion of the site is C-1A; the southern portion is
7 CPD.

8 There are entitlements in place through an MCP on
9 this property, and I'll go through -- it was
10 interesting, they had two options for development on
11 this property so there's different entitlements based
12 on each different -- one of those options. It is
13 within a mixed-use overlay district; it's within the
14 North Fort Myers Planning Community. We did have a
15 meeting with the North Fort Myers Planning Community
16 design Review Board, and they had no issues with the
17 project.

18 So like I said, the current property approval,
19 there's master concept plan option 1, which is mainly
20 commercial and hotel. So you'd have your retail uses,
21 restaurant, and hotel uses. Master concept plan option
22 2 had medical office and some commercial and retail,
23 banks, restaurants, also had hotel or 110 units of
24 assisted living or 128 dwelling units, a maximum. So
25 there was more of a mixed use in the option 2 so there

1 was an intent to have multi-family here possibly with
2 the current zoning as it is in place. And, again,
3 building heights up to 45 feet; for the hotel/motel, it
4 could be up to 75 feet.

5 Again, we are requesting a rezone to RPD with a
6 maximum number of units of 285. That would be in eight
7 buildings, and Sina will go over that master concept
8 plan with you, and you'll be able to see that. We'd
9 have an amenity center. Most of these types of
10 apartment projects will. There will be some parking
11 garages where, you know, people that would want a
12 garage would have that ability.

13 We have .99 acres of non-impacted wetlands, and
14 there is a condition of approval that has to do with
15 the wetlands. I'll go through that later when we get
16 to that slide, but the point will be we have verified
17 those now.

18 We do want to point out that multi-family is one
19 of the types of residential uses that I don't -- there
20 is not really any in the North Fort Myers area of this
21 caliber, of what we would call luxury type of
22 apartment. A lot of modular or manufactured homes, a
23 lot of single-family, but really not much of this type
24 of a residential unit. So I think it really helps to
25 add some diversity to the housing types in North Fort

1 Myers.

2 Again, we have a multi-family project with amenity
3 center, and the density is at 14.68 dwelling units per
4 acre. We will be taking advantage of a transfer of
5 residential units to get to that 285. We have 10.8
6 acres of open space; .99 of those are preserved
7 wetlands. And there's also additional indigenous
8 preserve, and you'll see that in the concept plan.

9 This is our master concept plan, and I'll turn it
10 over to Sina, and he can go through some of the
11 highlights.

12 HEARING EXAMINER RIVERA: Thank you.

13 Good morning.

14 MR. EBRAHIMI: Good morning.

15 Thank you, Peter.

16 My name is Sina Ebrahimi, a certified engineer in
17 the state of Florida with Kimley-Horn & Associates,
18 also the civil engineer of record for the project.

19 As Peter had mentioned, I wanted to touch up on
20 some things that he talked about, as well as Jeff. You
21 can see here a master concept plan. It's a
22 multi-family development including some garage spaces.

23 One of the cool parts about this project is we're
24 providing over 50 percent of open space over the total
25 area of 19 acres, which is going to be plus or minus,

1 like Peter mentioned 10 acres --

2 THE REPORTER: Okay, slow down just a little bit.

3 MR. EBRAHIMI: Sorry about that.

4 THE REPORTER: That's okay.

5 MR. EBRAHIMI: Amongst that 50 percent you have
6 common areas for pedestrians; you have the lake areas;
7 you have existing wetland, which we're preserving all
8 .99 acres, and Peter mentioned, has been certified -- I
9 mean, has been indicated by the South Florida Water
10 Management District -- and we also have over 2.5 acres
11 of indigenous preserve we are maintaining.

12 The property is going to be a gated community.
13 Like Peter mentioned and Jeff had mentioned, we are
14 seeking two deviations as part of this project.
15 Deviation 1 has been withdrawn by Staff, and we agree
16 it's not required. We had originally anticipated the
17 dry detention over there, the .5 acres near the
18 entrance, to be -- to be wet detention; but since then
19 due to water quality enhancements, we have made that a
20 dry detention area; and therefore Deviation 1 will not
21 be required.

22 Deviation 2 seeks relief from providing a single
23 U-turn movement at the front entrance. Because it's a
24 gated community, the LDC 34-1748 requires that a
25 30-foot truck can make a single U-turn movement at the

1 entrance of any gated communities. We're seeking
2 relief. We have our clubhouse at the -- prior to the
3 main entrance of the gate, and we also have our trash
4 compactor prior to the entrance of the gate. So we
5 don't anticipate many large vehicles entering the
6 gates, and therefore we believe this is something
7 that's viable for the --

8 HEARING EXAMINER RIVERA: Can you go back a
9 slide -- I'm sorry -- and just show me where -- I don't
10 see the gate noted exactly. I see the two
11 deviations --

12 MR. EBRAHIMI: The gate is not noted here, but
13 it's in this area.

14 HEARING EXAMINER RIVERA: Oh, okay. So it is
15 where the "2" is noted?

16 MR. EBRAHIMI: Yeah.

17 HEARING EXAMINER RIVERA: Okay.

18 MR. EBRAHIMI: And then you have -- does this
19 thing have a clicker?

20 MR. VAN BUSKIRK: Yeah, there's a --

21 MS. WORKMAN: Yeah, it has a --

22 MR. VAN BUSKIRK: -- pointer on there.

23 MS. WORKMAN: -- pointer.

24 MR. EBRAHIMI: There we go.

25 MR. VAN BUSKIRK: Yeah.

1 MS. WORKMAN: There you go.

2 MR. EBRAHIMI: So like I said, the trash compactor
3 is prior to the gate, and then our clubhouse is prior
4 to the gate, as well, therefore we don't anticipate
5 many large vehicles passing the gate except for some
6 moving trucks --

7 HEARING EXAMINER RIVERA: And the cross access
8 easement that's shown at the top, is that going to be
9 gated, as well? Or how -- it will be constructed in
10 way that's barricaded, or is that actually a
11 functional --

12 MR. EBRAHIMI: It will be a functional access. We
13 will have two points of access to the property. Our
14 main point of access will be through Cleveland/US 41,
15 but we do have an existing access easement on the
16 northern adjacent property that we'll be using as
17 access, as well --

18 HEARING EXAMINER RIVERA: Okay.

19 MR. EBRAHIMI: -- full access.

20 HEARING EXAMINER RIVERA: And then I understand on
21 the south portion, the rectangles appear to be the
22 actual multi-family buildings, but then there are
23 several scattered smaller rectangles. Are those the
24 parking areas?

25 MR. EBRAHIMI: Those are the parking garages,

1 correct.

2 HEARING EXAMINER RIVERA: Thank you.

3 MR. EBRAHIMI: Uh-huh.

4 The cross pattern hatch represents indigenous
5 preserve surrounding the clubhouse, as well as dry
6 detention.

7 So with that, like I was saying, Deviation 1 is
8 withdrawn. We agree with Staff, it's no longer
9 required. Again, it was to enhance water quality, and
10 for stormwater we went from a wet pond to a dry pond;
11 and Deviation Number 2 requesting relief from the
12 Section 34-1748 for a U-turn to be a three-point
13 U-turn. As Jeff had mentioned, these come with two
14 conditions, and we agree good engineering practice will
15 allow us to provide those items during development
16 order to obviously show that those movements work and
17 provide proper signage instruction at those entrances.

18 That's it. Peter -- I'll let Peter take it over.

19 MR. VAN BUSKIRK: Thank you, Sina.

20 So we've already touched on a couple of the Staff
21 conditions. As Jeff mentioned, the Applicant agrees
22 with all the conditions of approval.

23 First of the Staff conditions, this is the
24 schedule of uses. Jeff did mention, if you notice the
25 first use is single-family residential tract, R-1. We

1 don't think that that necessarily is appropriate
2 because of the master concept plan using the
3 multi-family. So we would just suggest that that be
4 stricken from the schedule of uses. All the other uses
5 are similar to what you would see with this type of
6 project, entrance gates, the multi-family accessory
7 buildings, and so forth, private on-site recreation
8 facilities.

9 HEARING EXAMINER RIVERA: So to that point, on 2a,
10 the schedule of uses, then -- so single-family should
11 be stricken, and then it still references residential
12 tracts, R-1; but it appears Parcel A is the only thing
13 that's really noted. There isn't like an R-1 tract.

14 MR. VAN BUSKIRK: There isn't so I don't know -- I
15 didn't know if that was referencing a zoning, but there
16 really isn't an R-1 zoning so --

17 HEARING EXAMINER RIVERA: So that could just be
18 stricken?

19 MR. VAN BUSKIRK: It didn't seem to fit so I think
20 it's probably best just to strike it.

21 HEARING EXAMINER RIVERA: Okay.

22 MR. VAN BUSKIRK: The development regulations are
23 a part of the Staff conditions, basically talks about
24 setbacks from preserve, wetlands, the building
25 setbacks, the lot sizes, so forth, building heights,

1 building coverage. Our master concept plan meets all
2 these criteria so we, again, would accept this
3 condition.

4 The open space talks about the .99 acres of
5 wetland, along with the total of 2.7 acres of
6 indigenous preserve. One of the comments or the
7 conditions is relative to showing -- verifying the .99
8 acres of wetland because that would then relate to the
9 amount of indigenous that we are providing and the
10 total open space. We have had that verified by the
11 Water Management District, and we have experts here
12 that can testify to that, if needed. But I did want to
13 point that out, that that has been taken care of.

14 We recognize the conservation easement must be
15 recorded, and we talked about, you know, getting with
16 the Water Management District to verify that wetland
17 acreage.

18 We talked about the turnaround conditions already
19 so I won't dwell on those.

20 Here's an aerial map showing the area of the
21 project. Here's our project boundary. This is
22 Serendipity, a manufactured home park. Most of the
23 other lands around us are vacant and zoned in some form
24 of commercial. So with that, you know, I think it's --
25 the project itself is compatible because, one, it adds

1 this diversity of a residential type of project; but we
2 also have commercial along the 41 corridor here that
3 can be accessed from the project, and there's
4 existing -- going the wrong way here, wrong button.
5 Let's go back to the beginning. Okay. Now we're back.

6 I did want to point out that on our side of the
7 street, there is an existing sidewalk along there.
8 There's a wide path. So there's accessibility
9 throughout all this North Fort Myers area from this
10 project. You can jump on that path; you can get to
11 parks; you can get to commercial/retail. It's very
12 accessible to the area; and, again, I think that's why
13 this project fits well here.

14 The future land use is central urban, and central
15 urban does promote that mixed use type of development
16 within this area. And it's a very large area of
17 central urban so we kind of -- underneath where the
18 star is there -- unfortunately, the "41" symbol covers
19 up our property, but you can see where we're, you know,
20 in the middle of this whole central urban area.

21 And here's our existing zoning. We've got the
22 C-1A to the north, and then the CPD to the south making
23 up the entire parcel.

24 Our proposed zoning would be to take both those
25 zoning districts and create one RPD district out of

1 both of those, and you can see some of the surrounding
2 zoning. So we do have, you know, the commercial to the
3 north, we've got CPD to the northeast, and vacant
4 commercial down the other side of 41. We have vacant
5 RPD to our west, and then we've got the developed MH-2
6 to the northwest.

7 And I'll point out, too, if you look back at the
8 master concept plan, you'll see that the -- that the
9 bulk of the boundary between Serendipity and our
10 project is all of that indigenous preserve. So they
11 are not abutting any of the development. It's all
12 indigenous preserve along here.

13 This is just the conclusion of our traffic impact
14 statement. The level of service, based on both current
15 capacity and the pro -- and the proposed project, along
16 with, you know, the -- traffic into 2026, which is our
17 build-out date, the roadways would still meet the
18 minimum adopted level of service, therefore there's no
19 improvements required on any of the roadways in the
20 area. Our traffic engineer is here if you need to ask
21 any questions.

22 Here we're showing you our FLUCCS map. You can
23 see the wetland highlighted in the light green color
24 there, a couple water features that were on the site,
25 just a couple ditches there probably left over from

1 some agricultural uses. And, again, we are preserving
2 this wetland in its entirety. And then, you know, a
3 lot of this area, this pine flatwoods, is going to be
4 preserved as our indigenous preserve.

5 Again, I pointed out some of the surrounding
6 zoning districts. And we feel that our project is
7 compatible with these. Because it is a mixed-use
8 overlay, we are adding that new, you know, type of
9 residential to the area that's not there. So I think
10 that it works well with being near commercial so people
11 can live in these apartments and work close so they're
12 not driving a long way to get to their employment.

13 Lee Plan consistency, I'll just touch on these. I
14 won't read every single bullet for you. But, again, we
15 believe we're compatible with our surrounding areas.
16 The density is within the maximum density allowed. We
17 will be using TDRs to get there.

18 You know, the area is somewhat already heavily
19 developed, but we do have vacant commercial on the
20 other side of the road so it's -- it's somewhat like an
21 infill project here because, again, it was already
22 zoned to have commercial and residential uses.

23 Development timing, I think, is something that's
24 important here because, again, this whole area consists
25 mainly of manufactured and single-family homes. You

1 know, the -- the demand for apartments has been very
2 strong, and you can go a lot of other places in Lee
3 County, and you'll see new apartment buildings going up
4 all over, and they fill up immediately. North Fort
5 Myers is lacking in that type of a housing project. So
6 I think this is really a -- a really good project, and
7 especially at this time. You know, we'll get a
8 different type of residential users in there to support
9 the commercial that's already there.

10 Again, some Lee Plan consistency, water and sewer
11 is available. We have our letters from both Lee County
12 for water and FGUA for sewer. Because it's a developed
13 area, EMS, fire, police are in the area. The road
14 network's already there. We're right on US 41. You
15 know, based on our transportation analysis, we don't
16 need any improvements. We are meeting certainly the
17 level of service for roadways.

18 Again, Goal 5.1.3 talks about, you know, high
19 density-developments near employment, shopping centers,
20 parks, schools, transit, bicycle facilities. We really
21 meet all those things because of the developed nature
22 of the area. The fact that the roads are in place; the
23 fact that there's already this bicycle and pedestrian
24 facility adjacent to us that connects to other ones
25 that can get you all through North Fort Myers.

1 We talked about adjacent properties'
2 compatibility, buffering, open space. We showed you
3 where our indigenous preserve is. It really helps
4 buffer us from Serendipity. We did not have anybody at
5 our public hearing come out in objection. We've not
6 heard anything, and I don't know if Staff has heard
7 anything from --

8 MS. WORKMAN: No, sir.

9 MR. VAN BUSKIRK: -- anybody there. So I think
10 that it sounds like maybe people agree with us, that we
11 are compatible.

12 Talking about our wetlands and wetland objective,
13 we are preserving our wetlands; we're adding indigenous
14 preserve or maintaining some indigenous preserve there.
15 We have a condition of approval that we have to record
16 that easement with the development order, and we are in
17 agreement with that.

18 Sina pointed out that we changed our wet detention
19 to dry detention, and what we're finding -- when we do
20 our stormwater analysis now, we have to show this net
21 improvement on our discharges from the site, so dry
22 detention helps us with that. So when we have wet
23 detention connected to dry, we can show a net
24 improvement of water quality discharging from the site.
25 Also, we had -- we could withdraw one of our

1 deviations, too.

2 Again, we are meeting the planning community
3 regulations. We are in the North Fort Myers Planning
4 Community. This was presented to the board -- the
5 design board there, and they had no objection to the
6 project.

7 The LDC consistencies, again, the density is
8 within the allowable in the central urban land use. We
9 talked about compatibility with surrounding
10 developments. We are in the mixed-use overlay. We're
11 taking advantage of that. We have all capacities for
12 water, sewer, and roadway.

13 Again, when we go down through the checklist, we
14 can show compliance with all of the findings that we
15 need to meet.

16 And thank you for your consideration of our
17 request, and Jeff's going to close.

18 HEARING EXAMINER RIVERA: Okay, thank you.

19 MR. WRIGHT: That's obviously our last witness.
20 That concludes our presentation. We have our whole
21 team here if there's any questions.

22 And we have demonstrated that we meet the
23 standard, which is the greater weight of competent
24 substantial evidence, and the applicable criteria for
25 the requested rezoning, and we respectfully request

1 your recommendation for approval. Thank you.

2 HEARING EXAMINER RIVERA: Thank you. I didn't
3 have any questions.

4 Whenever you're ready, Beth.

5 MS. WORKMAN: Okay.

6 HEARING EXAMINER RIVERA: Good morning.

7 MS. WORKMAN: Good morning. Beth Workman, for the
8 record, from the Zoning section. I'm a principal
9 planner. I've been accepted as an expert in this forum
10 before, and I wish to do so today, as well.

11 HEARING EXAMINER RIVERA: Yes, thank you.

12 MS. WORKMAN: I'm just going to enter my
13 PowerPoint into the record. I'll get that out of the
14 way.

15 (Staff Exhibit 2 submitted.)

16 HEARING EXAMINER RIVERA: Thank you. And I will
17 make that Staff's Exhibit 2 because 1 is the Staff
18 Report, thank you.

19 MS. WORKMAN: Okay. So as Mr. Wright mentioned,
20 we're here for DCI-2022-00027, MIVO North Fort Myers.

21 The Applicant did an excellent job going through
22 the surrounding uses and the request and the Lee Plan
23 analysis. I just want to hit on a couple things about
24 the bonus density. This is a request to rezone 19.41
25 acres from commercial, C-1A, and commercial planned

1 development to the residential planned development.

2 The request is for a maximum of 285 dwelling units,
3 which includes 95 bonus density units. Staff has
4 recommended approval with conditions.

5 The history we kind of went through. The C-1A was
6 remnant rezoning from Z-69-160 for the home/travel
7 trailer park, is what it was called. It was part of
8 this MH-2. So this was all joined together as one, and
9 this is Z-69-160. It later was rezoned to C-1A.

10 The CPD, as Van Buskirk went through, had two
11 different options going into it with varying heights
12 on -- for the hotel use, 75 feet, and the rest of the
13 uses at 45 feet, which is important to note because of
14 the requested height in here for the multi-family. I
15 believe it's 60 feet, if I'm not mistaken.

16 In going through history, then the mixed-use
17 overlay was added to Lee Plan Map 1, Page 6, after this
18 Z-09-025 was approved with those options.

19 They did come in for a request for administrative
20 with -- administrative approval for some multi-family
21 dwelling units and, again, the multi-family at 75 feet,
22 which was the previous hotel use.

23 It's important to note on the adjacent property,
24 this RPD that's here, this has an approval with an
25 alternate MCP, which is important to the positioning of

1 where that multi-family is. So I want to point that
2 out for compatibility.

3 The one option on this RPD to the west was to have
4 their surface water management lake about this CPD. The
5 other option was for an assisted living facility
6 structure to be built here, too. So there's two
7 different options. This is, of course, vacant right
8 now, but I wanted to talk about that a little bit
9 because of the compatibility with the garages and the
10 units going in this southern portion of the RPD.

11 HEARING EXAMINER RIVERA: So if it's developed as
12 the assisted living, what would the buffer be between
13 the two?

14 MS. WORKMAN: The buffer between the two, because
15 this is in the mixed-use overlay, it's going to be a
16 10-foot buffer with 5 trees every 100 feet and a
17 double-staggered hedgerow called a Type B, as in boy,
18 buffer, and that's part of the mixed-use overlay. And
19 in that area, as you can see when we get to the master
20 concept plan, the development goes right up, and
21 there's a 15-foot setback along that area; whereas you
22 work to the north, you have the amenity center up to
23 the north, which is set back really far from the mobile
24 home park because you have a preserve set in there that
25 separates it, and that's a pine flatwood preserve,

1 which is in pretty good shape. So what you see there
2 will be the buffer that will, you know, provide
3 screening from the amenity center, the dumpsters, and
4 the entryway to the site.

5 So kind of jumped it a little bit, but here's kind
6 of the surrounding uses kind of explained, and
7 Mr. Van Buskirk went through that very nicely.

8 And here's the master concept plan. So as I was
9 saying, there is a preserve that runs along this area
10 here, which is pine flatwood; and you have the mobile
11 home park to the west, Serendipity; and as you work
12 south is where the clustering comes into the
13 development where you have the units around the lake;
14 and so then this is where either the surface water
15 management lake will be or the assisted living
16 facility, depending on which option they go with.

17 Again, the Applicant went through the Lee Plan
18 policies. They are meeting these Lee Plan policies.
19 It's in central urban. There are adequate facilities
20 and services. The infrastructure is on a bus route.
21 It does have all the sidewalks in the infrastructure to
22 support the multi-family. It is in the mixed-use
23 overlay, as I mentioned. And the very last one, Policy
24 11.2.6, encourages properties in the mixed-use overlay
25 to utilize the bonus density.

1 So running through the bonus density just a little
2 bit, now, Staff, when they were reviewing this
3 application, did not have the formal jurisdictional
4 wetland determination. So what you see in the
5 conditions regarding the wetland is an important
6 component to this because that drives some of the
7 density calculations.

8 So this chart that's before you -- these two
9 charts are speaking to the density -- the standard
10 density with impacts to wetlands, and then the maximum
11 bonus density if no impacts to wetlands occurs. And so
12 291, that includes 97 bonus density, with a footnote
13 for the central urban transfer of density if you save
14 the wetlands is noted at the bottom. And that's
15 important for the next slide because bonus density in
16 the Land Development Code 2-147 has criteria. In order
17 to tap into the bonus density program, you need to meet
18 these criteria.

19 And the first one is that additional traffic from
20 this development due to the bonus density does not have
21 to travel through significantly lower densities before
22 reaching the nearest collector or arterial. Well, as
23 you can see on the master concept plan, the Applicant
24 is providing two access points: One is an easement
25 that runs to the north, and the north property is a

1 medical office and then it links into a convenience
2 food and beverage that then links to Littleton. So you
3 have that connector that doesn't have to go through
4 lower densities, and then you have the access that's
5 directly on Cleveland Avenue, which is an arterial
6 road. So it does meet that criteria.

7 The next one is the existing and committed public
8 facilities are not so overwhelmed that the density
9 increase would be contrary to the overall public
10 interest. So they are meeting this. They have the
11 letters of availability. There is capacity. The road
12 has capacity to take on the multi-family with the bonus
13 density in this case.

14 The other two criteria are the storm shelters.
15 Well, this is not in the coastal high hazard so that
16 does not apply, and the resulting development will be
17 compatible with the existing and planned surrounding
18 uses. As Mr. Van Buskirk went through, and my previous
19 slides show, it is compatible in this area, and he made
20 a very good point by stating that it does add
21 diversity. If you look around, there really isn't any
22 multi-family. Across the street on US 41 there's some
23 single-family and townhomes that are proposed as part
24 of a commercial setting for the mixed use, but they
25 haven't been developed yet. They are approved in that

1 setting. I believe that the development order is
2 expired on those. I think it was a 2007 development
3 order.

4 And so with that, going through the Land
5 Development Code compliance for the height, buildings
6 over 45 feet -- 45 feet in 34-2175 must demonstrate
7 that they can go higher than 45 feet by clustering in
8 their open space, and the Applicant does do that. They
9 cluster the multi-family to the south; they have
10 setbacks from their amenity center with the
11 preservation areas; and they're meeting the buffer
12 requirements per the Land Development Code.

13 One thing I do want to touch on is that it is in
14 the mixed-use overlay; and in the mixed-use overlay,
15 it's either large development or small development. It
16 doesn't matter if it's residential, industrial, or
17 commercial. It goes by if you meet the definition of
18 large or small development. This is a large
19 development, over 10 acres in size or 2 acres of
20 impervious, so it does meet the requirement for the 20
21 percent open space for this use. And so the Applicant
22 is required to provide 3.88 acres. The Applicant is
23 providing 10.83 acres of open space. Half of that must
24 be represented as indigenous. The Applicant is
25 providing over, at 2.73 of indigenous uplands, and then

1 the .99 acres of the wetland preservation.

2 And then going through the buffers, which was
3 previously mentioned, any time a project abuts
4 residential -- abuts residential, it doesn't matter
5 what the on-site use is, it's required to have a
6 10-foot-wide buffer in the mixed-use overlay, and this
7 is in 10-245(f). The right-of-way is a five-foot-wide
8 buffer, and the Applicant is demonstrating compliance
9 with the open space, the indigenous open space, as well
10 as all the buffering.

11 And deviations, I did just go ahead -- I know the
12 48-hour letter came in, and Development Services
13 recommended withdrawal of Deviation 1. I just wanted
14 to circle where that was. And because the Code doesn't
15 require setbacks for the dry detention, that's why we
16 recommended withdrawal of that, and we do agree with
17 that.

18 The second deviation was -- Sina had gone over and
19 covered it nicely. It's just located in this section,
20 and it's just a concern for, if someone comes up to the
21 gate, to be able to turn around; and they're
22 conditioning the three-point turnaround paved surface,
23 and there are two conditions associated with that that
24 Development Services provided. It's conditioned at
25 Number 6 and Number 7 in the Staff Report.

1 Environmentally sensitive, we went over that.

2 The clustering of the development to the south,
3 preservation of this -- of this wetland, as well as the
4 pine flatwood that kind of rings this area to protect
5 the mobile home park, Serendipity, to the west,
6 provides compatibility in that area.

7 The wetlands at the time, like I mentioned, we
8 didn't have a verified formal JD. It sounds like they
9 do now so they are meeting the requirements in Policy
10 124.1.2 if it verified that 0.99 must be saved. Staff
11 has not looked at that. We haven't received a copy of
12 that.

13 So environmental considerations, there's no
14 indication of protected species per the protected
15 species survey that was provided.

16 As I mentioned, it does meet the open space and
17 indigenous.

18 And then there's a Condition 5, that they just
19 need to verify the wetland acreage, and that's
20 important not only for the Policy 124.1.2 but also to
21 calculate the density, and it ties into the bonus
22 density, as well.

23 Surface water management, as Mr. Van Buskirk went
24 over, they are providing pretreatment before the water
25 leaves the site, meeting all the Lee Plan policies

1 pertaining to green infrastructure and surface water
2 management systems.

3 And the traffic, the traffic was interesting. I
4 usually don't read traffic impact statements, but I
5 read this one. The traffic was looked at from the
6 actual CPD because it was -- half of it was in a CPD,
7 and it already had a recent one, traffic impact
8 statement. And it turns out that because of the
9 intensity of that CPD, and now we're going to the
10 multi-family, that it is a reduction so it's better for
11 the roadway system. And also the addition of the
12 parcel to the north as another layer onto that, that
13 makes it better for supporting the actual proposed
14 multi-family.

15 And so we agree with the 48-hour letter. We
16 did -- I did speak to Jeff before the hearing, and we
17 do agree with that.

18 And then the findings and conclusions, the
19 Applicant has demonstrated that they are meeting the
20 findings and conclusions of 34-145, and Staff
21 recommends approval as conditioned.

22 I'm here for any questions.

23 HEARING EXAMINER RIVERA: The only question I had
24 was just clarification that Conditions 6 and 7
25 addressed the Development Services memo that was

1 Attachment F. It had -- had a notation, I think, that
2 7 addresses it, but it said Staff recommends the
3 following condition, and then there's no text after
4 that. So I think it just got dropped off of the
5 Development Services --

6 MS. WORKMAN: Oh, yeah.

7 HEARING EXAMINER RIVERA: -- and I'm assuming
8 that's what 7 is, but I wanted to confirm that on the
9 record.

10 MS. WORKMAN: Yeah, it is.

11 HEARING EXAMINER RIVERA: Okay.

12 MS. WORKMAN: It is, yeah. When I was going
13 through making the PowerPoint, I confirmed that, as
14 well.

15 HEARING EXAMINER RIVERA: Okay, perfect. That was
16 the only question I had. Did Applicant have any
17 questions of Staff?

18 MR. WRIGHT: No questions, thank you.

19 HEARING EXAMINER RIVERA: Thank you.

20 MS. WORKMAN: Thank you.

21 HEARING EXAMINER RIVERA: Did Applicant have any
22 closing remarks that you wanted to make?

23 MR. WRIGHT: Nothing further, thank you.

24 HEARING EXAMINER RIVERA: Okay, thank you.

25 We will go ahead and close the hearing then for

1 today. Thank you, everyone, for coming. Thank you for
2 excellent presentations by both Applicant and Staff. I
3 have everything that I need to prepare what I need to.

4 This will go to the Board for final hearing, so of
5 course you'll receive a copy of my recommendation when
6 it's released, and then notice of the Board hearing
7 date. So thank you.

8 Thank you, everyone, for coming. Stay well.

9 (Proceedings concluded at 9:49 a.m.)
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3 CERTIFICATE OF REPORTER
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5 STATE OF FLORIDA)

6 COUNTY OF LEE)
7

8 I, Deborah Bruns, Florida Professional
9 Reporter, do hereby certify that I was
10 authorized to and did report the foregoing
11 proceedings, and that the transcript, pages 1
12 through 36, is a true and correct record of my
13 stenographic notes.
14

15 Dated this 27th day of January, 2023.
16

17 
18 Deborah M. Bruns, FPR
19

20
21 (This transcript was electronically signed.)
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